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SUBJECT: GUATEMALAN COURT AGAIN STRIKES DOWN PAYMENTS TO
EX-PARAMILITARY

REF: 04 GUATEMALA 2804 AND PREVIOUS

1. (U) Summary and introduction: For the third time in the past 14 months, Guatemala's Constitutional Court struck down direct payments to former members of the armed civil defense (paramilitary) forces (PAC) established by the Guatemalan Army in the early 1980s. The ex-PACs have refrained from immediate reprisals but are still demanding compensation. President Berger has resurrected development projects targeted at ex-PAC communities as an alternative to the problematic individual cash payments to ex-PACs. End summary.

2. (U) By a four to three vote in the February 8 ruling, the Constitutional Court determined that a 2004 law providing for payments of approximately \$665 to the ex-PACs was unconstitutional because the Congress had failed to specify a funding source for the payments as required by Article 240. The Constitutional Court struck down previous legislation in September 2004 for the same reason; the current measure was passed by Congress late last year but again failed to meet constitutional standards. This time, the Court also cited Article 155, which says that neither Guatemalans nor foreigners are entitled to indemnity for losses or damages caused by armed conflict or civil disturbances. The seven judges who signed the decision included alternates who replaced four judges who had recused themselves because of ex-PAC threats. Coincidentally on the same day, a court in Huehuetenango Department sentenced an ex-PAC leader and a former town mayor to six years and two years in prison, respectively, for their roles in the kidnapping of journalists during an October 2003 highway blockade by ex-PAC members.

3. (U) President Berger reacted to the latest ruling by announcing that the GOG would abandon efforts to obtain approval of individual cash payments to the ex-PACs. Berger restated his willingness to work with ex-PAC leaders and suggested that reforestation or other community development projects would be viable alternatives to cash payments. Ex-PAC leaders said they would consult among themselves before responding, but two insisted that Berger comply with his campaign promise to provide cash payments. Another ex-PAC leader expressed concern that the leaders would not be able to restrain ex-PACs from violent action if the payments were not made.

4. (SBU) Comment: The 2003 presidential election saw all major parties making campaign promises of cash payments to the ex-PAC members. The Berger Administration tried to comply, notwithstanding financial constraints, the strong disapproval of human rights groups and other civil society representatives, and the perception of GOG weakness created by its tolerance of disruptive and sometimes violent pressure tactics on the part of the ex-PAC membership. Despite the Court's very clear opinion in September 2004 that the Congress needed to identify a specific funding source for the payments, the Congress essentially approved an unfunded, open-ended liability for the government by authorizing payments to an undetermined number of ex-PACs. The latest Constitutional Court decision provides the GOG with political cover for abandoning the scheme, and further ex-PAC attempts to coerce the GOG will likely meet a firm response.

HAMILTON